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Written statement* submitted by the World Organisation Against Torture, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* Issued as received, in the language(s) of submission only.

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Crackdown on peaceful dissent and arbitrary detention in Tibetan areas

In 2011, the Chinese government started implementing the so-called "stability maintenance campaign" in the Tibet Autonomous Region (TAR) and other Tibetan villages in Qinghai, Gansu, Sichuan and Yunnan provinces, intensifying social control and surveillance at the grassroots level. Since then, the number of protests resulting in detentions and convictions have increased considerably in Tibetan areas. Reportedly, nighttime and early morning raids, resulting in unlawful deprivations of liberty lacking legal justifications are also on the rise.[1] Most of the detained and prosecuted are local community leaders, environmental activists, and individuals involved in social and cultural activities.[2]

Many of the arbitrarily detained are held incommunicado, placing them outside the protection of the law. Legislative loopholes, including in the People's Republic of China's (PRC) Criminal Procedure Law allow derogations to fundamental legal safeguards and can lead to situations amounting to incommunicado detention or enforced disappearances as defined by international human rights law.[3]

In 2012, Article 73 of the Chinese Criminal Code was amended to allow the so-called "Residential Surveillance at a Designated Location", a form of detention regularly used against individuals suspected to endanger State security. The family of the arrested person should be notified of his/her whereabouts within 24 hours. However, the location and the reason for the arrest is typically not disclosed to the family.[4] In such cases the assigned residence will amount not only to an arbitrary deprivation of liberty, but an unacknowledged deprivation of liberty and in fact a disappearance. Moreover, the Chinese Criminal Code also allows to deny access to legal representation to individuals suspected to endanger State security.[5]

A large majority of those detained are charged with 'endangering state security' and convicted for "leaking state secrets" and "inciting separatism", often on overbroad definitions and interpretations. For instance, in 22 May 2018, the Tibetan language activist Tashi Wangchuk was sentenced to five years in prison for "inciting separatism" for comments he had made to The New York Times criticizing Chinese authorities for their failure to protect and promote Tibetan culture and language.[6]

In January 2018, a former journalist named Tsegon Gyal was sentenced to three years in prison, also for "inciting separatism", reportedly in connection to a social media post in which he criticized the government of China for failing to genuinely promote its policy of "ethnic unity".[7] Tsegon Gyal was held in pre-trial detention for more than a year without access to legal representation. Already in April 2017, the UN Working Group on Arbitrary Detention had ruled that the deprivation of liberty of Mr. Gyal was arbitrary and had urged for his immediate release.[8] The decision of the Working Group remains thus unimplemented.

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[1] Relentless: Detention and Prosecution of Tibetans Under China's 'Stability Maintenance' Campaign, Human Rights Watch, May 2016, available at: https://www.hrw.org/report/2016/05/22/relentless/detention-and-prosecution-tibetans-under-chinas-stability-maintenance and Inevitable Imprisonment: Special Report on Arbitrary Detention in Tibet, TCHRD, May 2017, available at http://tchrd.org/wp-content/uploads/2017/05/Inevitable-Imprisonment_-Arbitrary-Detention-in-Tibet.pdf

[2] Ibid.

[3] Committee Against Torture, Concluding observations on the fifth periodic report of China, 3 February 2016, CAT/C/CHN/CO/5, para. 14, 15, and Caster, M. (2017). The People's Republic of the Disappeared: Stories from inside China's system for enforced disappearances. Safeguard Defenders.

[4] Ibid. CAT, para 14.

[5] Ibid.

[6] A Tibetan Tried to Save His Language. China Handed Him 5 Years in Prison, New York Times, 22 May 2018, available at: https://www.nytimes.com/2018/05/22/world/asia/tibetan-activist-tashi-wangchuk-sentenced.html

[7] Prominent former political prisoner Tsegon Gyal sentenced to three years on charge of 'inciting separatism', TCHRD, 18 February 2018, available at: http://tchrd.org/prominent-former-political-prisoner-tsegon-gyal-sentenced-to-three-years-on-charge-of-inciting-separatism/

[8] UN Human Rights Council, Report of the Working Group on Arbitrary Detention at its 78th session, 19-28 April 2017, 11 August 2017, A/HRC/WGAD/2017/4, available at: https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session78/A_HRC_WGAD_2017_4.pdf

Reports indicate the existence of numerous 'legal education' centres, in which people are arbitrarily detained for unspecified periods and forced to study Chinese laws and policies, watch pro-government propaganda videos and renounce their ethnic and religious identities.[9] There are reports and allegations of detainees in these centres being subjected to torture, and other cruel, inhuman or degrading treatment, including sexual abuse.[10] The existence of such centres in the Tibet Autonomous Region (TAR) and elsewhere raises questions over the veracity of PRC's claim that it fully abolished the 'Re-education Through Labour' system (Ch: *laojiao*) in 2013.[11]

In April this year, 30 individuals were beaten and arbitrarily detained after protesting against plans to mine Sebtra Zagyen, a sacred mountain in Shakchu (Ch: Shaqu) Town in Diru (Ch: Biru) County, Nagchu (Ch: Naqu) Prefecture, TAR. Protests were triggered by the enforced disappearance of a village leader who had challenged an official order forcing villagers to sign a document allowing local government authorities to carry out mining at the sacred mountain.[12] The project may have devastating consequences on the local environment and biodiversity, undermining the availability of drinking water for local residents. At the time of writing, there is no available information on the conditions of the 31 villagers, due to a clampdown on information.

Torture allegations remain frequent in the PRC. In the last Concluding Observations of the Committee Against Torture (CAT)'s review of China, the Committee stated that it "remains seriously concerned over consistent reports indicating that the practice of torture and ill-treatment is still deeply entrenched in the criminal justice system, which overly relies on confessions as the basis for convictions".[13] The Committee also expressed serious concerns over credible allegations of torture cases in the Tibetan areas and the excessive use of force therein.[14] Domestic legislation and the lack of independent domestic remedies or international oversight enable unlawful and arbitrary detention and detention conditions that may amount to torture,[15] including the use of solitary confinement as a "management method" and not as a last resort.[16] There are also worrying allegations of deaths in custody as a result of torture.[17]

Recommendations:

In light of this situation, we call on the **Human Rights Council** to urge the **Government of PRC** to:

- Immediately end the abuses and violence against peaceful dissenters in Tibetan areas as well as the use of all forms of unlawful detention;
- Ensure that every person is granted access to legal representation and that the families are notified of the reasons for arrest and of the whereabouts of their relatives within 24 hours from the arrest;
- Ensure respect for fair trial standards to every person including people charged with 'endangering state security' and abolish the system of "Residential Surveillance at a Designated Location" without notification and legal representation for national security reasons;
- Urgently implement the decisions of the UN Working Group on Arbitrary Detention, release and drop all charges against Tsegon Gyal, Tashi Wangchuk and all other individuals who have been arrested arbitrarily and who are still in detention;
- Immediately disclose the fate and whereabouts of Markor village leader, Mr. Karma, disappeared in connection with the Sebtra Zagyen mining project and drop charges and release the 30 villagers detained;

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[9] China : Free Xinjiang « Political Education » Detainees, Human Rights Watch, available at: https://www.hrw.org/news/2017/09/10/china-free-xinjiang-political-education-detainees

[10] Tibetan monk's account reveals torture and sexual abuse in China's 'political re-education' centres, TCHRD, 28 May 2018, available at: http://tchrd.org/tibetan-monks-account-reveals-torture-and-sexual-abuse-rampant-in-chinas-political-re-education-centres/

[11] Extrajudicial detention still a major issue despite RTL abolition, TCHRD, 29 December 2013, available at: http://tchrd.org/extrajudicial-detention-still-a-major-issue-despite-rtl-abolition/

[12] Village leader among 31 Tibetans detained for opposing mining at sacred mountain, TCHRD, 14 May 2018, available at: http://tchrd.org/village-leader-among-31-tibetans-detained-for-opposing-mining-at-sacred-mountain/

[13] Committee Against Torture, Concluding observations on the fifth periodic report of China, 3 February 2016, CAT/C/CHN/CO/5, para. 20.

[14] Committee Against Torture, Concluding observations on the fifth periodic report of China, 3 February 2016, CAT/C/CHN/CO/5, para. 40, 41.

[15] Ibid. CAT, para. 7, 10, 12, 16, 18 and 22.

[16] Ibid. CAT, para. 26.

[17] Ibid. CAT, para 24.

- Abolish the 'legal education' centres and ensure full compliance with international human rights standards;
- End the practice of torture or ill-treatment and fully implement the recommendations of the UN CAT in all regions;
- Systematically investigate all allegations of torture and other forms of ill-treatment and arbitrary detention wherever they occur, prosecute and punish the perpetrators and provide redress to the victims.